

# MEMORANDUM

**TO:** Members, Clark Fork Basin Water Management Task Force  
**FROM:** Matt McKinney and Gerald Mueller, Project Coordinators, and Maureen Hartmann, Project Associate  
**SUBJECT:** Summary of the November 10, 2003 Meeting  
**DATE:** November 21, 2003

## Participants

The following people participated in the Task Force meeting:

### *Task Force Members:*

Eugene Manley	Granite County
Harvey Hackett	Bitterroot Water Forum
Fred Lurie	Blackfoot Challenge
Bill Slack	Flathead Irrigation District
Holly Franz	PPL Montana
Elna Darrow	Flathead Basin Commission
Steve Fry	Avista Corp
Jim Dinsmore	Upper Clark Fork River Basin Steering Committee
J. Gail Patton	Sanders County
Marc M. Spratt	Flathead Conservation District

### *Staff:*

Matt McKinney	Montana Consensus Council (MCC)
Gerald Mueller	MCC
Mike McLane	Montana Department of Natural Resources and Conservation (DNRC)
Maureen Hartmann	MCC

### *Visitors*

Harry Whalen	Montana Rural Water Systems, Inc.
Bill O'Connell	Montana Rural Water Systems, Inc.
Curt Martin	DNRC Water Right Bureau Chief
Tim Hall	DNRC Attorney

## Meeting Goals

- Discuss water conservation ideas
- Discuss drought management plans
- Review State-Avista water rights agreement
- Discuss DNRC water rights enforcement policy and activities
- Discuss public outreach and newsletter
- Discuss work plan

## October 6, Meeting Summary Clarification

The October 6, 2003 meeting summary stated that, "Since a Water Court Judge has affirmed the validity of Avista's water rights, additional water is apparently available for future appropriation only a few days per decade." The summary should have clarified that "affirmed" meant that the judge approved a temporary preliminary decree (TPD) including Avista's water rights. Because this was an early TPD, Avista's rights are still subject to additional objections in the adjudication

process.

## **Water Conservation**

Harry Whalen and Bill O'Connell, both with the Montana Rural Water Systems, Inc., made brief presentations on non-agricultural water conservation ideas. Montana Rural Water is funded by the federal government to provide technical assistance to rural municipalities. The program has been in operation for 25 years in Montana, and it currently includes two circuit riders, and a wastewater technician. Mr. Whalen provided the Task Force with copies of two versions of a model ordinance enacting a water conservation plan which are attached below in Appendices A and B. He also left a copy of drought tips addressing toilet leaks and faucet leaks and landscaping conservation. Mr. Whalen stated that water meters are one of the biggest incentives for water conservation and can reduce consumption by 50-60%. State grant and loan programs are available to support water conservation efforts if they begin with the installation of meters.

In the subsequent discussion, the Task Force identified the following as ideas to consider for chapter 9 of the water management plan, strategies to provide for the conservation of water:

- Require/install water meters;
- Identify and manage/protect areas in which surface waters recharge ground water;
- Create water quality districts;
- Provide education about activities that might affect ground water recharge and quality;
- Pass water conservation ordinances;
- Participate in the Source Water Protection Program;
- Provide water conservation education to rural water users through the Rural Development and Extension Service Programs;
- Encourage counties to require water meters in new subdivisions;
- Encourage local governments to require water meters in water systems that they own;
- Make water metering a requirement in DNRC water rights permitting (new permits and changes);
- Manage the supply side, e.g. use artificial recharge;
- Manage/protect ground water provided by irrigation;
- Emphasize that wasting water also wastes electricity; and
- Coordinate DNRC and DEQ well requirements to ensure cumulative effects analysis (DEQ requires pump test resulting in 1.5 times design flow rate; DNRC requires pump test showing design flow rate).

## **Drought Management Plans**

Gerald Mueller and Mike McLane led a discussion of the existing drought management plans for the Big Hole, Blackfoot, and Jefferson watersheds. Copies of these plans were distributed to Task Force members prior to this meeting. The Task Force identified the following similarities in the three plans. The plans:

- Were developed voluntarily, but were motivated by some combination of the following factors:
  - N     A perceived threat such as an Endangered Species Act listing, a requirement to measure all irrigation diversions, etc.;
  - N     Economics;

- N A sense of community, i.e. we are in this together;
- N The desire to preserve the quality of life; and
- N Individual personalities and social pressure
- Were designed to meet fishery or instream flow objectives;
- Were based on trigger flows;
- Are locally implemented;
- Share shortages with sportsmen and sportswomen through fishing closures;
- Contain long-term water conservation measures such as ditch lining, wells for stock watering, and water trading; and
- Are funded through grants and donated services from agencies and individuals (Blackfoot plan annual costs are \$8-10,000).

The Task Force members tentatively agreed that the management plan should:

- Describe existing watershed drought management plans in the basin;
- Acknowledge that base flow is tied to vegetation in the headwaters;
- Acknowledge the relation between water and electricity management;
- Encourage creation of smaller subbasin planning entities;
- Recommend that watersheds within the basin that do not have drought management plans develop them;
- Recommend research on the connection between ground water infiltration and base stream flow; and
- Set target flows for water discharge from each of the major watersheds in the basin.

Mr. Mueller agreed to write suggested language for the plan addressing drought management plans.

## **State-Avista Water Rights Agreement**

Mike McLane and Steve Fry presented the agreement, which is attached below as Appendix C, that the State of Montana and Avista Corporation reached in 1999 but failed to ratify. The purpose of the agreement was to protect the security of existing water rights, including Avista's hydropower rights at its Noxon Rapids Hydroelectric Project, and preserve options for the orderly development in the Clark Fork River Basin. The agreement provided that the basin would be closed to additional water rights to prevent further depletions, although the details of the closure were not specified. At such time when Avista would issue a water rights call, the governor would have the option of terminating the basin closure or extending it to the end of the next legislative session. Before issuing a call, Avista would have the duty to notify the state to allow the state and the company to discuss options that would avoid the necessity of commencing the call. Mr. Fry stated that triggering implementation of local drought plans might have been one such option. Because the Federal Energy Regulatory Commission declined to make the agreement a provision of the Avista license for the Noxon Rapids and Cabinet Gorge projects, the agreement was not ratified. Not all Task Force members were comfortable with the idea of a closure because of the constraints it would impose on future water development. Others pointed out that new development depending on access to water would be more likely to purchase an existing senior water right rather than rely on a new right with the most junior priority date. Steve Fry was asked if Avista is objecting to the issuance of new water rights permits on the grounds that they would

adversely affect the company's existing water rights. He answered that Avista is filing objections in the adjudication, but has not been objecting to new permits. It was pointed out that Avista objections to new permits might have the same effect as a basin closure. Task Force members began identifying alternatives to an agreement involving a basin water rights closure. Those identified included:

- Purchasing water rights from Avista;
- Using ground water to meet future demands; and
- Avista would start objecting to new water rights permits.

The Task Force agreed to revisit this issue at its next meeting.

## **DNRC Water Rights Enforcement Policy and Activities**

### Enforcement Policy

Curt Martin, DNRC Water Rights Bureau Chief, passed out a copy of DNRC Administrative Policy No. 3, "Conflict Resolution and Enforcement Actions" (Policy) which sets forth DNRC's response to alleged water use violations. According to the Policy, staff of the Water Resources Division must first attempt to negotiate a resolution of conflict between water users. If the negotiation is unsuccessful, and the violation continues, the DNRC may issue a notice and order to cease the violation and then seek judicial enforcement to seek a temporary restraining order, injunctive relief, and/or impose a fine of up to \$1,000 per day per violation. DNRC enforcement actions are subject to priority levels set out in Exhibit A of the Policy (see Attachment D below).

Tim Hall, a DNRC attorney, explained a recent change in DNRC legal enforcement activities. He stated that DNRC does not get involved in disputes over facts between two parties with water rights. However, DNRC recently decided to seek criminal misdemeanor prosecution by county attorneys of instances of outright illegal use of water such as diversion of water without a permit. Mr. Hall recommended a statutory change that would allow a judge to award attorney fees to a private party bringing an action for an illegal use of water. He did not recommend awarding attorney fees in disputes between two water rights holders because of the chilling effect do so might have for the protection of individual water rights.

After a discussion, the Task Force identified possible plan recommendations regarding water rights enforcement:

- Change Montana law to allow a judge to award attorney fees to a private party bringing an action for an illegal use of water;
- Change Montana law to prevent a violator of the Montana Water Use Act from getting a water permit for some period of time; and
- Condition new DNRC permits to require measurement of flow and volume of water diversions; and
- Authorize DNRC staff to serve as a court appointed water master.

## **Plan Outreach and Task Force Work Plan**

Because of time constraints, discussion of public outreach for the water management plan and the Task Force work plan was deferred until the December meeting.

## **Next Meeting**

The date, time, and place of the next meeting was set for Monday, December 1, 2003 at 9:00 a.m. in the DFWP conference room at 3201 Spurgin Road in Missoula. The agenda will include:

- Review of the draft of plan chapter 7 including options to improve water rights enforcement;
- Review of the draft of plan chapter 9, including drought management plans;
- Continued discussion of a hydropower water rights, junior water rights, and future water development;
- A presentation about sub-basin planning funded through the Northwest Power and Conservation Council fish and wildlife program;
- Discussion of the plan public outreach; and
- Discussion of the Task Force work plan.

**Appendix A**  
**MODEL ORDINANCE**

(short version)

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

ENACTING a Water Conservation Plan pertaining to and governing water service rendered by the City; providing for the enforcement thereof; declaring a violation of said Water Conservation Plan, or any provision therein subject to certain penalties.

\_\_\_\_\_  
WHEREAS, under and by virtue of Article \_\_\_\_\_ of the Charter of the City of \_\_\_\_\_ the City Water Department is vested with the power and authority, and is charged with the duty and obligation of managing, controlling and operating the water utilities owned by the city; and

WHEREAS, the Water Department has recommended adoption by the City Council a Water Conservation Ordinance which would provide for the discontinuance, interruption, or curtailment of water service to consumers under specified conditions; and

WHEREAS, the City Council now finds, determines, and declares that it will be in the best interest of the citizens of the City, and of the Water Department, that proper and adequate provision be made for the enforcement of the Water Conservation Plan pertaining to and governing water service, and that from time to time hereafter said Water Department may fix, determine, adopt and promulgate amendments to, or changes in, said plan with same to be approved by the City Council, and for the violation thereof to be subject to a suitable penalty to be provided and fixed for any such violation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF \_\_\_\_\_ AS FOLLOWS:

That Chapter \_\_\_\_\_ of the \_\_\_\_\_ City Code is hereby amended by adding the following sections pertaining to the adoption of a Water Conservation Plan for water service and providing for enforcement of the same, as follows:

**Chapter 3 - Water Conservation Plan**

The following is hereby adopted as the Water Conservation Plan (hereinafter referred to as the plan.)

**WATER CONSERVATION PLAN**

The plan would become effective upon a finding by the management of the Water Department that a probable water shortage problem exists. When it can be anticipated that there is a distinct possibility of a water distribution shortfall, the following plan will be implemented until it can be determined that the emergency no longer exists. Depending on the expected severity of the problem it is possible that stages II and III might be implemented immediately. Requests for public cooperation would be made through the news media. This Ordinance will affect only those citizens and commercial entities that receive water service from the \_\_\_\_\_ Water Department.

### Stage One (voluntary)

Request voluntary conservation and compliance with the following restrictions:

- A. No washing of sidewalks, driveways, parking areas, patios, or other paved areas.
- B. No refilling of swimming pools with water furnished by the City.
- C. No washing of cars, other motor vehicles, trailers, or boats.
- D. No water to be used for dust control.
- E. No flushing of mains, except to alleviate specific complaints.
- F. Commercial and industrial users to conserve water as much as possible.

If, after the initiation of Stage One, weather conditions, expected trends in demand, or other factors indicate that the threat of a shortage will continue, the additional provisions of Stage Two will be implemented.

### Stage Two (voluntary)

Stage One restrictions would remain in effect plus the following:

- A. No use of water from a fire hydrant except for fighting fires,
- B. Watering of any lawn, garden, trees, or other plants is prohibited, except from a hand-held container.
- C. Commercial / industrial users to reduce usage by 30%.

If, after initiation of Stage Two, it appears that the shortage will continue or worsen, the mandatory measures of State Three would be implemented.

### State Three (mandatory)

All restrictions listed in Stage One and Two would become mandatory, plus all commercial and industrial users would be required to adopt previously submitted water conservation plans (see below.)

## SECTION II

Any person who shall violate any of the mandatory provisions of the plan, or any commercial / industrial user who fails to submit a conservation plan acceptable to the Water Department within 120 days of passage of this ordinance, shall be subject to the penalties set forth in section of the City Code and shall be subject to termination of service.

This ordinance shall be in full force and effect from and after passage.

DATE: \_\_\_\_\_ Mayor \_\_\_\_\_

City Clerk: \_\_\_\_\_

## Appendix 2

### City of Disaster

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#### GENERAL ORDINANCE NO. 502

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ENACTING a Water Conservation Plan pertaining to and governing water service rendered by the City; providing for the enforcement thereof; declaring a violation of said Water Conservation Plan, or any provision therein subject to certain penalties.

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WHEREAS, under and by virtue of Article 20 of the Charter of the City of Disaster, Missouri, the Water Department of the City of Disaster, Missouri, is vested with the power and authority, and is charged with the duty and obligation of managing, controlling and operating the water utilities owned by the City of Disaster, Missouri, (hereinafter sometimes called "the City"); and

WHEREAS, in the exercise of the powers and duties vested in and conferred upon it, the Water Department did, on January 5, 1980, fix, determine, adopt and declare that a *Water Conservation Plan* pertaining to and governing water service by the system owned by the City should be enacted in ordinance form and after date of passage of said ordinance by the City council that thereafter discontinuance, interruption or curtailment of water service to consumers may be effected in accordance with the provisions of said Water Conservation Plan, a certified copy of said Water Conservation Plan having heretofore been filed with the City Clerk of the City of Disaster, Missouri; and

WHEREAS, the City Council now finds, determines and declares that it will be for the best interest of the citizens of the City, and of the Water Department, that proper and adequate provision be made for the enforcement of the Water Conservation Plan pertaining to and governing water service, and that from time to time hereafter said Water Department may fix, determine, adopt and promulgate amendments to, or changes in, said plan with same to be approved by the City Council, and for the violation thereof to be subject to a suitable penalty to be provided and fixed for any such violation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF DISASTER, MISSOURI, as follows:

That Chapter 3 of the Disaster City Code is hereby amended by adding thereto six new sections pertaining to the adoption of a Water Conservation Plan for water service and providing for enforcement of the same, which section shall read as follows:

Chapter 3 Water Conservation Plan.

The following is hereby adopted as the Water Conservation Plan (hereinafter referred to as the plan.)

#### WATER CONSERVATION PLAN

The plan would become effective upon a finding by the management of the Water Department that a probable water shortage problem exists. When it can be anticipated that there is a distinct possibility of a water distribution shortfall, the following plan will be implemented until it can be determined that the emergency no longer exists.

Depending on the expected severity of the problem it is possible that stages II and III might be implemented immediately. Requests for public cooperation would be made through the news media. This Ordinance will affect only those citizens and commercial entities that receive water service from the Disaster Water Department.

## SECTION I

### Stage One (Voluntary)

Request voluntary conservation effort and compliance with the following restrictions;

- A. No washing of sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas, no pumping of fountain recirculating water.
- B. No refilling of swimming pools with water furnished by the City.
- C. No washing of cars, other motor vehicles, trailers, or boats.
- D. No water to be used for dust control.
- E. No flushing of mains by Water Department personnel, except to alleviate specific customer complaints.
- F. Commercial and industrial users will be requested to conserve water use as much as possible.

If, after the initiation of Stage One, weather conditions, expected trends in demand, or other factors indicate that the threat of a water shortage will continue, the additional provisions of Stage Two will be implemented.

### Stage Two (Voluntary)

Stage one restrictions would remain in effect plus the following restrictions would also be requested:

- A. No use of water from a fire hydrant except for fighting fires, human consumption, or use in connection with animals.
- B. Watering of any lawn, garden, landscaped area, trees, shrub, or other plant shall be prohibited, except from a hand-held hose or container, or drip irrigation system. Such watering shall be permitted only at times designated by the management of City Water Department.
- C. Commercial and industrial users would be requested to reduce their water consumption by 30%.

If, after the initiation of Stage Two, weather conditions, expected trends in demand, or other factors indicate that the threat of a water shortage will continue or worsen, or if a serious problem or system emergency should develop, the mandatory measures of Stage Three would be implemented.

### Stage Three (Mandatory)

- A. No washing of sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas, no pumping of fountain recirculating water.
- B. No refilling of swimming pools with water furnished by the City.
- C. No use of water for recreational uses such as water slides or yard play.
- D. No washing of cars, other motor vehicles, trailers, or boats except from a bucket.
- E. No water to be used for dust control.

- F. No flushing of mains by Water Department personnel, except to alleviate specific customer complaints.
- G. No use of water from a fire hydrant except for fighting fires, human consumption, or use in connection with animals.
- H. Watering of any lawn, garden, landscaped area, tree, shrub, or other plant shall be prohibited
- I. It would be mandatory that all large commercial and industrial users follow a previously submitted conservation plan for their operation that has been approved by the City Water Department. A customer that fails to submit a conservation plan would be subject to the penalties of Section V of this ordinance.

Depending upon the severity of the problem, the plan could revert back to stage One or Two or be canceled as conditions improve.

## SECTION II

### Commercial and Industrial Conservation Plans

Commercial and industrial customers must submit to the City Water Department a water conservation plan for their operation within 120 days of the passage of this Ordinance.

The conservation plan shall describe how the user intends to reduce water consumption during Stage Three of the Water Conservation Plan. The goal of the required plan should be to reduce the customer\*s usage by 50%. Specific measures should be listed and described, i.e., water recycling, delaying routine watering of lawns and shrubbery, delaying routine washing of equipment and facilities, changes to processes requiring less water, etc.

## SECTION III

### Notification Provision

With respect to the mandatory provisions of this plan, a customer shall be deemed to have been notified and directed to reduce the use of water as set forth in the plan when the General Manager of the City Water Department or his designated representative files such notice through the news media, except nothing contained herein shall be deemed to prohibit other means to notify persons of the need to reduce use of water in accordance with the plan.

Upon the Water Department taking steps to notify customers as set forth above, a customer shall be presumed to have notice and shall take steps to comply with the plan, except a customer may rebut such presumption by showing that the customer did not, in fact, have notice of the directions to comply with the provisions of this plan.

## SECTION IV

### Compliance With the Plan

Alt persons who receive city water service shall be entitled to receive such water service only upon strict compliance with provisions of the Plan.

It shall be unlawful for any person to violate the mandatory provisions of the Plan when such person is directed to reduce or curtail their use of water as set forth in step three of the Plan. A

direction to reduce or curtail use of water shall be presumed when notice is given as set forth in the Plan.

#### SECTION V

##### Penalties

Any person, who shall violate any of the mandatory provisions of the Plan pertaining to discontinuance, interruption, curtailment of water service, or any large commercial or industrial user who fails to submit a conservation plan acceptable to the Water Department within 120 days of the passage of this ordinance shall be subject to the penalties set forth in section 1-7 of the Disaster City Code.

Additionally, any Large commercial or industrial user who fails to submit a conservation plan as required will be subject to termination of service during State Three of the Water Conservation Plan at the discretion of the management of City Water Department

Any new customer who shall be required to file such a plan shall have a grace period of 120 days from the date of service hook-up to comply

#### SECTION VI

That the sections, subsections, sentences, clauses and all other parts of this ordinance, are severable and are not matters of mutually essential inducement; and that, if any one or more of said sections, subsections, sentences, clauses or other parts of this ordinance shall for any reason be questioned in any court or shall be adjudged unconstitutional or invalid, and the same shall not impair, invalidate, affect or prejudice in any way the remaining provisions of this Ordinance.

#### SECTION VII

This ordinance shall be in full force and effect from and after passage. Passed at meeting: January 16, 1980

Richard Smith

(Mayor)

Attest: Phyllis Jones City Clerk

**Appendix C**  
**WORKING AGREEMENT TO PROTECT THE SECURITY OF EXISTING  
RIGHTS AND TO PRESERVE OPTIONS FOR THE ORDERLY  
DEVELOPMENT OF WATERS IN THE CLARK FORK RIVER BASIN  
UPSTREAM OF THE NOXON RAPIDS HYDROELECTRIC PROJECT**

**PREAMBLE:** A legislatively enacted closure of the Clark Fork River Basin upstream of the Noxon Rapids Hydroelectric Project, coupled with an undertaking by Avista Corporation not to commence a call upon junior water rights without prior notice to the State of Montana, provides the framework for a mutually satisfactory agreement (herein referred to as “Existing Water User Protection Agreement”).

**PURPOSE:** The purpose of this Working Agreement and the Existing Water User Protection Agreement is to provide legal and practical mechanisms as a license condition to Federal Energy Regulatory Commission Projects No. 2058 and 2075 to protect the security of existing rights and to preserve options for the orderly development of waters in the Clark Fork River Basin upstream of the Noxon Rapids Hydroelectric Project. The purpose specifically includes a closure of the Clark Fork River Basin to further depletions that would adversely effect existing water rights in the basin as one mechanism that will encourage the orderly development of water in the basin.

**ELEMENTS:** The following are established as critical elements of this Working Agreement and these elements shall be used as the framework for the Existing Water User Protection Agreement:

1. The State of Montana will request the Fifty-seventh Legislative Assembly to pass a law precluding appropriation of waters in the Clark Fork River Basin in Montana as provided in Mont. Code Ann. § 85-2-319 (hereinafter “Basin Closure”). The Basin Closure shall preclude the issuance of new water use permits for consumptive purposes in the Clark Fork River Basin in Montana, subject to the following:
  - a. The State of Montana and Avista Corporation will use a public collaborative process to reach a consensus agreement between Avista Corporation and the State of Montana on all elements and conditions of the Basin Closure.
  - b. Avista Corporation is not obligated to abide by any condition in this Working Agreement or to continue with the development of the Existing Water User Protection Agreement unless in Avista Corporation’s judgment, the elements and conditions of a Basin Closure substantially stop the further depletion of the waters of the Clark Fork River Basin in Montana.
  - c. The Existing Water User Protection Agreement must encourage voluntary processes for the sale or transfer of existing water rights in order to preserve options for the orderly development of water within the basin.
  - d. The Existing Water User Protection Agreement must encourage voluntary processes that allow for the establishment of those types of new water rights in sources of supply in the Clark Fork basin that are not closed to further appropriation, if any, under the Basin Closure in order to preserve options for the orderly development of water within the basin.
  - e. A Basin Closure may not limit or condition Avista Corporation’s existing water rights, including Avista Corporation’s right to make a call upon junior water right users, beyond any limitation or condition that Avista Corporation agrees to in the Existing Water User Protection Agreement. Nothing in this Working Agreement may be construed to require Avista Corporation to negotiate any aspect of its water rights in establishing the Existing

## Water User Protection Agreement.

2. Subsequent to the enactment of a Basin Closure, Avista Corporation will not commence a call upon junior water right users without giving prior notice to the State of Montana.
  - a. Avista Corporation will give notice to the State of Montana that it intends to commence a call. Such notice will be in written or printed form and will be delivered by messenger, mail, facsimile or electronically to the office of the Governor at least thirty days before Avista Corporation commences to formally notify junior water right users that it is making a call upon their rights. The date that Avista Corporation commences to formally notify junior water right users that it is making a call upon their rights will be referred to herein as the "Call Date."
  - b. By April 15 of each year in which Avista Corporation believes there is a reasonable likelihood that it may make a call upon junior water rights users, Avista Corporation will provide to the Director of the Department of Natural Resources and Conservation, or other official designated by the Governor, a written statement of the likelihood that Avista Corporation will initiate a call during the year. The failure to provide a written statement or the filing of a written statement will be non-binding and will not preclude Avista Corporation from commencing a call upon junior water right users during the year under the procedure established in 2.a. If the written statement identifies the likelihood that Avista Corporation will make a call, the State of Montana may initiate the dialogue contemplated in 2.c.
3. Avista Corporation and the State of Montana agree that, during the time after which Avista Corporation gives notice of its intention to make a call and before the Call Date, they will make reasonable efforts to conduct a dialogue to identify options to avoid the necessity of Avista Corporation commencing a call. Avista Corporation will retain the sole discretion to determine whether it will make a call. Avista Corporation and the State of Montana may mutually agree to continue the dialogue beyond the originally scheduled Call Date if the discussion of options appears promising.
2. The Basin Closure will terminate on the Call Date, provided that the Governor will have the authority under the terms of the Basin Closure to extend the Basin Closure until the end of the next regular legislative session that begins after the Call Date.
  - e. Nothing in this Working Agreement, the Existing Water User Protection Agreement, or a condition of the licenses may vest, or may be interpreted or construed to vest in the Federal Energy Regulatory Commission jurisdiction to condition or otherwise interfere with the right of Avista Corporation to make a call.
3. Avista Corporation and the State of Montana shall request the Federal Energy Regulatory Commission to approve this Working Agreement that provides for the negotiation of, and if agreed to by Avista Corporation, the implementation of the Existing Water User Protection.
  - a. If the Federal Energy Regulatory Commission does not act upon the request to place a condition on the license based upon this Working Agreement, then upon execution of the Existing Water User Protection Agreement Avista Corporation and the State of Montana shall request the Federal Energy Regulatory Commission to approve the Existing Water User

Protection Agreement.

- b. If the Federal Energy Regulatory Commission has not acted upon a request for an approval and placement of a condition on the licenses by the time the Basin Closure is enacted, Avista Corporation and the State of Montana will implement the Existing Water User Protection Agreement for a period not to exceed one year after the enactment of the legislation. Thereafter the legislation shall terminate.
4. Except as provided for in this Working Agreement, the Existing Water User Protection Agreement may not restrict the rights of Avista Corporation.
5. The Basin Closure must specify that Avista Corporation's failure to initiate a call during the term of the Basin Closure is not a diminishment, waiver or abandonment of Avista Corporation's existing water rights in Montana.

By: \_\_\_\_\_  
For Avista Corporation

By: \_\_\_\_\_  
For the State of Montana

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ENFORCEMENT PRIORITY LEVELS	
LEVEL	SITUATION
LEVEL I	Public Health concerns Wasting water egregiously (surface and groundwater)
LEVEL II	Basin Closure violation Controlled Groundwater Area violation Appropriating water without a Permit Violation of Permit/Change Terms or Conditions Change without Authorization Appropriating without a Stock Permit (605)
LEVEL III	Appropriating without a Certificate (602) Exceeding a Claim or Certificate (602)
LEVEL IV	Ignoring a call on a Claim Property Damage

- LEVEL I Suspected violations receive immediate attention in the Regional Office. A field investigation is made within 48 hours of knowledge of alleged violation, whether it is by personal knowledge or written complaint. Immediate attention will be given to deciding whether an enforcement action can and should be pursued.
- LEVEL II Suspected violations receive immediate attention in the Regional Office. Investigation conducted as soon as possible after knowledge of alleged violation. Pursuit of an enforcement action will depend on time and resources.
- LEVEL III Regional Office will contact alleged violator and may conduct investigation. A letter advising violator will be sent. Enforcement action will be a low priority.
- LEVEL IV No DNRC effort will be expended.